REMARKS

Claims 1 – 226 remain pending in this application. Claims 40 – 111 stand withdrawn from further consideration on the merits. Further reconsideration of this application is requested. The claims have been amended to apply a consistent subscript format to the term "HbA_{1c}" as requested. Additionally, the claims have been amended to correct a grammatical error in the use of the "comprise" instead of –comprises--. Withdrawal of the formal objection to the claims is requested in view of these amendments.

35 U.S.C. §101 Rejection:

The rejection of claims 1 – 18, 37, 38, 116 – 154, 175 – 214, and 221 – 226 under 35 U.S.C §101 is respectfully traversed to the extent that this ground of rejection may be applied to the claims as amended. Previously, claims 1, 135 and 195 were rejected on the purported basis that "the claims do not recite a tangible result such that it is useful to one skilled in the art." Claims 19, 38, 155 and 215 were rejected on the basis that these claims were directed to non-functional descriptive material. The Office action stated that "[t]his rejection could be overcome by amending the claims to recite that a result of the method is 'displayed' or 'outputted." In response, the rejected claims were amended as suggested, wherein the results are outputted to a user, and thereby provide a practical application that produces a useful result, such as evaluating blood glucose levels of a diabetic patient and enabling the patient to manage their condition.

Now, claims 37, 116 – 134, 175 -194 and 221 – 226 are rejected on the alleged basis that "no real world result" is set forth, and that claim 38 allegedly reads on a "transitory signal." In response, claims 37, 175 and 221 have been amended to set forth that the result is outputted to a user. Claim 38 has been amended to specify that the computer readable medium is a tangible medium (such as a magnetic data storage disc, a solid state memory module or memory chip, etc). It is noted, however, that computer data could be transmitted to the tangible computer readable medium via an electromagnetic or optical signal, and the amendment to claim 38 is not intended to preclude such transmission from being within the scope of the claim.

Claims 1 – 18, 135 – 154 and 195 – 215 are now rejected on the purported basis that they "they also read on abstract ideas." This ground of rejection apparently is based on the "machine-or-transformation" test set forth in *In re Bilski*, __ F.3d __, 2007-1130 (Fed. Cir. 2008)(en banc). In *Bilski*, the Court explained that the "transformation" part of the test is met where electronic transformation of data into a visual depiction is set forth:

> In contrast, we held one of Abele's dependent claims to be drawn to patent-eligible subject matter where it specified that "said data is X-ray attenuation data produced in a two dimensional field by a computed tomography scanner." Abele, 684 F.2d at 908-09. This data clearly represented physical and tangible objects, namely the structure of bones, organs, and other body tissues. Thus, the transformation of that raw data into a particular visual depiction of a physical object on a display was sufficient to render that more narrowly-claimed process patent-eligible.
>
> We further note for clarity that the electronic transformation of the data itself into a visual depiction in Abele was sufficient; the claim was not required to involve any transformation of the underlying physical object that the data represented. We believe this is faithful to the concern the Supreme Court articulated as the basis for the machine-or-transformation test, namely the prevention of pre-emption of fundamental principles. So long as the claimed process is limited to a practical application of a fundamental principle to transform specific data, and the claim is limited to a visual depiction that represents specific physical objects or substances, there is no danger that the scope of the claim would wholly pre-empt all uses of the principle.

Consequently, claims 1 – 18, 135 – 154 and 195 – 215 have been amended to specify that the estimate is electronically transformed into a visual depiction; and that the visual depiction is outputted to a user. In particular, such transformation is described at pages 18 – 24 of the specification and shown in Figs. 6 – 9. Here, the HbA1C data clearly represents physical and tangible objects, namely the glycosylated hemoglobin level of a patient. Thus, the transformation of that data into a visual depiction is sufficient to render the method claims patent-eligible under *Bilski*. In view of the foregoing amendments, reconsideration and withdrawal of the non-statutory subject matter rejection is requested.

35 U.S.C. §112 Rejection:

In response to the rejection of claims 1 – 39 and 112 – 226 under 35 U.S.C. 112 as being indefinite, the claims have been amended in light of the

Examiner's comments to eliminate any issue of indefiniteness that may have existed. Superfluous and extraneous language, setting forth "predetermined sequence of mathematical formulas" and "at least one of four predetermined mathematical formulas" has been removed from the claims without altering the scope thereof. Additionally, claims 19, 38, 135, 155, 195, 215 and 221 have been amended to clarify how the HbA1c data is derived from the acquired or collected BG data. Reconsideration and withdrawal of this ground of rejection is requested.

Conclusion:

Applicants note with appreciation that the rejection of claims based on prior art has been withdrawn. In view of the foregoing amendments and explanation, claims 1-39 and 112-226 are submitted to be now in condition for allowance. The Examiner is authorized to cancel claims 40-111 without prejudice to the filing of one or more divisional applications, in the event that claims 1 – 39 and 112 – 226 are allowed. Applicants request favorable action in this matter. In order to facilitate the resolution of any issues or questions presented by this paper, the Examiner is invited to contact the undersigned by phone to further the discussion.

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Respectfully submitted,
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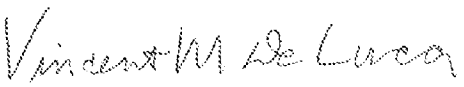

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